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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1979

## No. 79-1157

**EDWARD J. ROSEWELL, etc., et al.,**

*Petitioners,*

VS.

**LA SALLE NATIONAL BANK, TRUSTEE, etc.,**

*Respondent.*

**On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit**

## BRIEF FOR THE PETITIONERS

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**On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit**

# BRIEF FOR THE PETITIONERS

## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A, at 1a-19a) is reported at 604 F.2d 530 (7th Cir. 1979). The opinion of the district court (Pet. App. B, at 20a-21a) is not reported.

## JURISDICTION

The judgment of the court of appeals (Pet. App. A, at 19a) was entered on August 24, 1979. A timely petition for rehearing with a suggestion for rehearing *en banc* was denied on October 30, 1979 (Pet. App. C, at 22a-23a). The petition for a writ of certiorari was filed on January 26, 1980 and was granted on March 17, 1980. The Court's jurisdiction rests upon 28 U.S.C. § 1254(1).

## QUESTIONS PRESENTED

1. Whether the district court has jurisdiction under 28 U.S.C. § 1343(3) to entertain cases involving constitutional challenges to the collection of state taxes.

2. Whether the availability of a § 1983 action in Illinois courts bars district court jurisdiction under the Tax Injunction Act of 1937 (28 U.S.C. § 1341).

3. Whether the Illinois statutory real estate tax remedy, which denies pre-judgment interest, is plain, speedy, and efficient within the meaning of the Tax Injunction Act of 1937 (28 U.S.C. § 1341).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Statutes provide in pertinent part:

Title 28 U.S.C.

§ 1341. Taxes by States:

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

§ 1343. Civil rights and elective franchise:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

* * *

(3) To redress the deprivation under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

Title 42 U.S.C.

§ 1983. Civil action for deprivation of rights:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Illinois Constitution and the Statutes of Illinois provide in pertinent part:

> (The relevant constitutional and statutory provisions involved in this case are lengthy and therefore are reproduced in the appendix to the brief.)

Those provisions include:

Article IX, Section 4, Illinois Constitution of 1970 ..... 1a

Ill. Rev. Stat. 1977, ch. 120, sec. 501a ..... 1a

Ill. Rev. Stat. 1977, ch. 120, sec. 578 ..... 1a

Ill. Rev. Stat. 1977, ch. 120, sec. 594 ..... 2a

Ill. Rev. Stat. 1977, ch. 120, sec. 675 ..... 2a

Ill. Rev. Stat. 1977, ch. 120, sec. 675a ..... 4a

Ill. Rev. Stat. 1977, ch. 120, sec. 710 ..... 5a

Ill. Rev. Stat. 1977, ch. 120, sec. 716 ..... 5a

Cook County Ordinance #COM 76815, 12-17-73 ..... 7a

## STATEMENT OF THE CASE

### Introduction

The issues presented for decision in this case arise from a tax injunction suit filed by the taxpayer in the United States District Court for the Northern District of Illinois. The taxpayer maintains that the state statutory legal remedy, which is available and usually followed in the situation involved herein, is not plain, speedy and efficient because pre-judgment* interest is not paid on refunds received in the state court. The taxpayer has also contested the efficiency of a state court action based on 42 U.S.C. § 1983 to remedy the alleged overassessment of the property. The court below agreed with these arguments and upheld federal jurisdiction.

The case is presented on the pleadings only, since the district court granted the petitioners' motion to dismiss. The well pleaded allegations of the complaint thus form the factual basis for the determination of the issues raised herein. *Walker Process Equipment Inc. v. Food Machinery and Chemical Corp.*, 382 U.S. 172, 174-75 (1965).

### Illinois Real Estate Tax Authority

In order to appreciate the basis for the taxpayer's allegations, it is necessary to set out the constitutional, statutory and ordinance authority by which the real estate tax is imposed in Cook County, Illinois.

---

* "Pre-judgment interest" as used in this brief means interest upon tax refunds computed from the time of payment to the time of the entry of the order of refund.

Article IX, Section 4(b) of the Illinois Constitution of 1970 provides that:

> ". . . counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county." (A. 4-5)*

This provision applies to Cook County, Illinois. Ill. Rev. Stat. 1977, ch. 120, sec. 501a requires that:

> "Where real property is classified for purposes of taxation in accordance with Section 4 of Article IX of the Constitution and with such other limitations as may be prescribed by law, such classification must be established by ordinance of the county board. If not so established, the classification is void." (A. 5)

In pursuance of this statute, Cook County, on January 1, 1977 had in effect County Ordinance #COM 76815 of December 17, 1973 which provided in part as follows (A. 5-6):

> "Section 2. Real estate is divided into the following assessment classes:
>
> . . .
>
> Class 2: Real estate used for residential purposes when improved with a house, an apartment building of not more than six living units, or residential condominium, a residential co-operative or a government-subsidized housing project if re-

* The Appendix attached to this Brief will be referred to as "Br. Ap.," and the separate Appendix will be referred to as "A.".

quired by statute to be assessed in the lowest assessment category.

Class 3: All improved real estate used for residential purposes which is not included in Class 2.

. . .

Section 3. The Assessor shall assess, and the Board of Appeals shall review assessments on, real estate in the various classes at the following percentages of market value:

. . .

Class 2: — 17%
Class 3: — 33%

. . . "

**The Taxpayer's Assessment And Taxation**

On January 1, 1977 the taxpayer's property, a 22 apartment rental property located in East Chicago Heights, Illinois, was indexed, assessed and taxed as follows (A. 4):

| Permanent Index Number | Volume | Assessed Valuation | Equalized Valuation | Rate | Tax |
|---|---|---|---|---|---|
| 32-23-414-054 | 16 | 52,150 | 73,808 | 8.274 | $6,106.00 |

The *permanent index number* and *volume* referred to above are property identifiers keyed to the legal description of real estate contained in county records. The *assessed valuation* is the fair cash value of the subject real estate as of January 1, 1977, reduced to the appropriate percentage indicated by the Cook County Classification Ordinance and certified by the Assessor of Cook County. The *equalized valuation* is the product of the assessed value multiplied by an equalization factor prepared by a department of the state government

charged with maintaining inter-county uniformity in taxation. The *rate* is established by dividing the total amounts levied by the taxing agencies in whose jurisdiction the subject property lies, by the equalized assessed valuation of all properties which lie in those tax agencies' jurisdiction.

**Pleadings**

The taxpayer's complaint, premised solely upon 28 U.S.C. § 1343(3) (Par. 3; A. 3) alleged that her property had a fair cash value of $46,000 on January 1, 1977, but was incorrectly assessed by the assessor at $52,150. The taxpayer alleged that the correct assessment was $15,180 (i.e. 33% of taxpayer's alleged fair market value of $46,000), and that the official assessment was three and one-half times higher than it should have been. (Complt. par. 10; A. 6.)

The taxpayer alleged that her property was over-assessed in 1974, 1975 and 1976, that she had pre-paid taxes in full for those years and received refunds without interest. (Complt. par. 14; A. 8.) The taxpayer alleged that the systems employed to make assessments in Cook County "have produced egregious disparities in assessment throughout the County". (Complt. par. 11-12; A. 7-8.)

The taxpayer asserted that her only remedy in the state court was by way of payment under protest of the full amount of tax claimed by the collector, and thereafter objecting at the collector's annual Application for Judgment. (Ill. Rev. Stat. 1977, ch. 120, sec. 675 and 716). The taxpayer alleged that the customary delay in receiving refunds upon successful prosecution of such a suit is two years, and that the courts of Illinois do not

award interest to taxpayers who successfully follow the statutory remedy. (Complt. par. 13, A. 8)

The taxes sought from the taxpayer were $6,106. The taxpayer asserts the proper amount to be $1,776. (Complt. par. 18, A. 10) Thus if she wins her case she will be entitled to an injunction against the collection of the allegedly excessive tax—$4,300.

The collector moved to dismiss on the following grounds:

1. Actions involving state tax assessments do not fall within the purview of 28 U.S.C. § 1343 and 42 U.S.C. § 1983.

2. The jurisdiction of the United States District Courts to enjoin the assessment, levy or collection of state taxes where there is a plain, speedy and efficient remedy in the state courts is barred by 28 U.S.C. § 1341.

3. Illinois provides taxpayers with a plain, speedy and efficient remedy by way of payment of the alleged excessive taxes under protest and objection at the collector's annual Application for Judgment.* This remedy is plain, speedy and efficient.

---

* Illinois provides at least the following remedies to a taxpayer whose real estate is overassessed:

1. Administrative, pre-assessment—The assessor cannot increase a real estate assessment in a non-quadrennial year without first giving the taxpayer notice of such proposed increase and the right to be heard thereon. See Ill. Rev. Stat. 1977, ch. 120, secs. 578, 579, *Goodfriend v. Board of Appeals*, 18 Ill. App. 3d 412, 305 N.E.2d 404 (1st Dist. 1973).

2. Administrative, post-assessment—The assessor has discretion, upon application by the taxpayer to offer a certificate of error in certain situations. See Ill. Rev. Stat. 1977, ch. 120, sec. 604.

3. Administrative, assessment review—Prior to issuance of the tax bills, the Board of Appeals of Cook County has statutory power to review assessments and order them

(Footnote continued on following page)

4. The mere denial of interest on a tax refund, after an alleged excessive assessment or tax is judged to be actually excessive, is insufficient to find that a state court remedy is not plain, speedy and efficient.

5. The doctrine of comity requires the district court to abstain because plaintiff has a state court remedy.

6. Plaintiff's Complaint fails to state a claim. (A. 11-12)

**The District Court Ruling**

On November 30, 1978, the district court dismissed the Complaint for want of jurisdiction. The district court stated:

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* *continued*
corrected. See Ill. Rev. Stat. 1977, ch. 120, secs. 594, 598; *People ex rel. Korzen v. Fulton Market Cold Storage*, 62 Ill. 2d 443, 343 N.E.2d 450 (1976).

4. Statutory legal remedy—With payment under protest and exhaustion of administrative remedies, a taxpayer may file an objection to the collector's application for judgment and sale of delinquent real estate. The circuit court possesses the power in this proceeding to determine whether the assessment is correct. See Ill. Rev. Stat. 1977, ch. 120, secs. 675, 716; *LaSalle National Bank v. County of Cook*, 57 Ill. 2d 318, 312 N.E.2d 252 (1974).

5. Injunctive Relief—A taxpayer may obtain injunctive relief when the legal remedy is unavailable. *Clarendon Associates v. Korzen*, 56 Ill. 2d 101, 306 N.E.2d 299 (1973); *28 East Jackson Enterprises v. Cullerton*, 523 F.2d 439 (7th Cir. 1975), *cert. denied*, 423 U.S. 1073 (1976). Supplemental Opinion upon Denial of Rehearing, 551 F.2d 1093 (7th Cir. 1976), *cert. denied*, 434 U.S. 835 (1977).

6. The remedies available to a taxpayer in Illinois include a 42 U.S.C. § 1983 claim. The Illinois Appellate court for the District in which the taxpayer's property is located has stated that, ". . . the courts of the State of Illinois have concurrent jurisdiction with the Federal courts to hear claims founded upon alleged violations of 42 U.S.C. § 1983." *Alberty v. Daniel*, 25 Ill. App. 3d 291, 295, 323 N.E.2d 110 (1st Dist. 1974).

1. The availability of equitable and declaratory relief in the Illinois state courts provides the plaintiff with a "plain, speedy and efficient" remedy. *Tully v. Griffin*, 429 U.S. 68 (1976).

2. The non-payment of interest on refunds pursuant to Sections 675 and 716 of Chapter 120, Illinois Revised Statutes, does not render the remedy in Illinois courts not "plain, speedy and efficient". (Pet. App. B. at 20a.)

The district court did not rule upon the other grounds set forth in the collector's motion to dismiss. The district court did, however, grant the taxpayer an injunction pending appeal pursuant to Rule 62(c) of the Federal Rules of Civil Procedure.

**The Court Of Appeals Ruling**

The court below unequivocally held that the remedies available to a taxpayer under Illinois' statutes and cases do not square with the requirement of the Tax Injunction Act, 28 U.S.C. § 1341, that they be plain, speedy and efficient.

In particular the court focused upon (1) the failure of the prepayment remedy of Ill. Rev. Stat. 1977, ch. 120, secs. 675, 716 to provide for the payment of interest upon refunds of successfully protested taxes, and (2) the question of whether the admitted availability of Illinois courts of a § 1983 action bars jurisdiction under 28 U.S.C. § 1341. The court of appeals stated:

> "Our review of the respective legislative histories of the Tax Injunction Act and section 1983 leads to the conclusion that Congress did not intend that the possibility of bringing a section 1983 action in state court would bar, pursuant to the Tax Injunction Act, federal jurisdiction over a section 1983 action brought in federal court. Further, we have conclud-

> ed that there is no legal or equitable remedy available under Illinois law which is "plain, speedy and efficient."

*LaSalle*, 604 F.2d at 540.

The collector petitioned for rehearing and suggested a rehearing *en banc*. The order of October 30, 1979 notes that "Judges Pell, Sprecher, Bauer and Wood voted to grant the suggestion for rehearing *in* [*sic*] *banc*." (Pet. App. C at 22a-23a). The regular active judges of the Seventh Circuit thus split 5 to 4 on the rehearing question.

## SUMMARY OF ARGUMENT

I.

The collector contends that the district court lacks jurisdiction under 28 U.S.C. § 1343(3) to entertain cases involving constitutional challenges to the collection of state taxes. The threshold question of the complaint's compliance with the specificity requirements of *Snowden v. Hughes*, 321 U.S. 1 (1944) as to allegations of tax discrimination is also presented. These questions are jurisdictional and were raised below in the collector's motion to dismiss. Review of these issues is thus supported by *City of Kenosha v. Bruno*, 412 U.S. 507, 511-13 (1973).

When this Court decided *Lynch v. Household Finance Corporation*, 405 U.S. 538 (1972) it did not overrule *Carter v. Greenhow*, 114 U.S. 317 (1884), *Pleasants v. Greenhow*, 114 U.S. 323 (1884), or *Holt v. Indiana Manufacturing Co.*, 176 U.S. 68 (1900) but rather dis-

tinguished their denial of federal jurisdiction as ". . . consistent with congressional restriction of federal jurisdiction in this special class of cases, and with longstanding judicial policy." *Lynch*, 405 U.S. at 542-43, n.6. Since the case at bar is a tax injunction suit, the restrictions set out in *Carter*, *Pleasants*, and *Holt* apply. This proposition has been articulated by the District Court for the Northern District of Illinois and affirmed by the Seventh Circuit. See *Czajkowski v. State of Illinois*, 460 F. Supp. 1265, 1277 (N.D. Ill. 1977) *aff'd. unpublished order*, 588 F.2d 839 (7th Cir. 1978), holding that, ". . . constitutional challenges to the collection or validity of state taxes form a special class of cases which fall outside the jurisdictional parameters of 28 U.S.C. § 1343(3)."

Pleadings alleging violation of rights allegedly protected by the Fourteenth Amendment must assert "intentional or purposeful discrimination between persons or classes." *Snowden*, 321 U.S. 1, at 7. The complaint specifically alleges that the taxpayer's property was overassessed, but fails to specify the intent or purpose which assertedly renders the assessment violative of the equal protection clause. The complaint thus fails to allege a sufficient case of unconstitutional discrimination under this Court's early cases, or under modern interpretations of the Fourteenth Amendment in relation to tax assessment cases. Neither does the complaint allege a violation of the taxpayer's due process rights under the Fourteenth Amendment, *McGovern v. New York*, 229 U.S. 363 (1913), since the taxpayer has a number of remedies available in Illinois to challenge her assessment.

## II.

The collector contends that the right of the taxpayer to challenge her real estate tax assessment by a § 1983 action in Illinois courts provides a plain, speedy, and efficient remedy and thus precludes federal jurisdiction. The great weight of authority supports concurrent state jurisdiction of § 1983 actions. With the exception of the court below in the case at bar, the lower federal courts have been unanimous in their approval of a state § 1983 action as a plain, speedy, and efficient remedy in tax assessment cases so as to bar federal jurisdiction under the Tax Injunction Act.

The contrary holding of the court below is out of step with the specific direction of the Court in *Tully v. Griffin, Inc.*, 429 U.S. 68 (1976) that "a federal court is under an equitable duty to refrain from interfering with a state's collection of its revenue except in cases where an asserted federal right might otherwise be lost." *Tully*, 429 U.S. at 73; and with the comity principles reaffirmed by the Court in *Trainor v. Hernandez*, 431 U.S. 434 (1977).

## III.

The collector contends that the statutory real estate tax remedy, which denies pre-judgment interest, is a plain, speedy, and efficient remedy within the meaning of the Tax Injunction Act of 1937. (28 U.S.C. § 1341) Federal jurisdiction was therefore barred. The Supreme Court of Illinois has held that pre-judgment interest on tax refunds accomplished through successful protest of real estate assessments is not allowable unless a state statute provides for it. That court stated ". . . we conclude that plaintiff is not entitled to interest in the absence of a statute imposing that liability. This being

so, the failure of the statutory remedy to provide for the recovery of interest is no measure of its adequacy or inadequacy." *Lakefront Realty v. Lorenz*, 19 Ill. 2d 415, at 423, 167 N.E.2d 236, at 241 (1960). The collector contends under § 1341 that if pre-judgment interest is not an element of damage in tax assessment cases, then a state statutory remedy which does not award pre-judgment interest is permitted. The weight of authority supports denial of pre-judgment interest where the tax is not unauthorized by law, but is excessive. It makes sense, also, to permit the legislatures of the several states to determine the extent to which pre-judgment interest is warranted. The fundamental policy judgment which is inherent in such a question is best left to the state, which has constitutional responsibility for its tax collection system. Furthermore, the comments made by the sponsor of § 1341, Senator Bone, indicate that a remedy is not plain, speedy, and efficient only where the taxpayer is given less than a full and fair hearing as to the tax controversy. Therefore, denial of pre-judgment interest has not been, historically, one of the factors which are considered in determining the adequacy of the state remedy under § 1341.

## ARGUMENT

### Introduction

Anticipatory federal relief against state tax collections is prohibited for very specific reasons based upon the states' financial and governmental needs.

As Mr. Justice Brennan has noted in his concurrence in *Perez v. Ledesma*, 401 U.S. 82 (1971):

> The procedures for mass assessment and collection of state taxes and for administration and adjudication of taxpayers' disputes with tax officials are generally complex and necessarily designed to operate according to established rules. State tax agencies are organized to discharge their responsibilities in accordance with the state procedures. If federal declaratory relief were available to test state tax assessments, state tax administration might be thrown into disarray, and taxpayers might escape the ordinary procedural requirements imposed by state law. During the pendency of the federal suit the collection of revenue under the challenged law might be obstructed, with consequent damage to the State's budget, and perhaps a shift to the State of the risk of taxpayer insolvency. Moreover, federal constitutional issues are likely to turn on questions of state tax law, which, like issues of state regulatory law, are more properly heard in the state courts. See generally, S. Rep. No. 1035, 75th Cong., 1st Sess. (1937).

*Perez*, 401 U.S. at 127-28 n. 17.

The importance of a dependable, secure stream of revenue to local governments has led to the requirement in Illinois, as in many other states, of real estate tax prepayment with litigation of disputes postponed by law to a later stage in the collection cycle. The reasons for

the statutory prepayment requirement in Illinois are rooted in the economic depression of the 1930's, as set forth in *Clarendon Associates v. Korzen*, 56 Ill. 2d 101, 306 N.E. 2d 299 (1973):

> Prior to 1933 a taxpayer had no means of recovering a tax which had not been paid under duress. There was also no requirement that the tax be paid before an objection to the application for judgment could be made. We learn from *People ex rel. Sweitzer v. Orrington Co.*, 360 Ill. 289, 293, that during the financial depression of those years taxpayers, in order to delay payment of real estate taxes, would not pay their taxes and would file objections to the application for judgment. The great number of taxpayers following this procedure delayed adjudication of the objections and severely impaired the collection of taxes and thus the functions of governmental units.

*Clarendon*, 56 Ill. 2d at 106, 306 N.E.2d at 302.

Furthermore, while delay for its own sake can be a strategic inducement for a taxpayer to seek an injunction, any tax injunction also transfers the risk of taxpayer insolvency to the government, as noted above by Mr. Justice Brennan in his *Perez* concurrence, 401 U.S. at 127 n. 17. Where equity law is not precise, and where comity and federalism interests are intertwined, it is not an easy matter for states to prevent taxpayer manipulation of existing law to stall tax payments, a phenomenon noted above in *Clarendon*, 56 Ill. 2d at 106, 306 N.E.2d at 302.*

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* This Court has noted: "It is a profitable thing for corporations or individuals whose taxes are very large to obtain a preliminary injunction as to all their taxes, contest the case through several years litigation, and when in the end it is found that but a small part of the tax should be permanently enjoined, submit to pay the balance. This is not equity." [*State Railroad Tax Cases*, 92 U.S. 575, 616-17 [1875).]

A notorious example of such tax avoidance exists here in the Seventh Circuit with regard to a downtown Chicago property located at 28 East Jackson Street. As described by Mr. Justice Downing in *28 East Jackson Enterprises v. Rosewell*, 63 Ill. App. 3d 880 (1st Dist. 1978) 380 N.E. 2d 895, a taxpayer employed:

> [a] series of cases in both the State and Federal courts by which plaintiff has avoided entirely the payment of real estate taxes on the subject property since 1971. The history of plaintiff's legal maneuvers is set forth in *28 East Jackson Enterprises, Inc. v. Rosewell* (1976), 65 Ill.2d 420, 358 N.E.2d 1139, in *28 East Jackson Enterprises, Inc. v. Cullerton* (7th Cir. 1975), 523 F.2d 439, and in *28 East Jackson Enterprises, Inc. v. Cullerton* (7th Cir. 1977), 551 F.2d 1093, and will not be repeated here.
>
> It is sufficient here to say that these maneuvers suggest a pattern whereby plaintiff has taken advantage of an unresolved question of Illinois law, a gray area of Federal-State relations, and the delays inherent in the judicial process to delay the sale of its tax-delinquent property until after the following year's taxes have also become delinquent, after which a new suit is filed raising the same precise issues and beginning the process anew.

*28 East Jackson, supra*, 63 Ill. App. 3d at 881-82, 380 N.E. 2d at 896.

Having delayed the payment of more than $700,000 in real estate taxes for more than eight years, the taxpayer filed for a reorganization under Chapter 11 of the Bankruptcy Act in late 1979. See, *In the Matter of 28 East Jackson Enterprises, Inc., Debtor*. 79 B 39051, United States Bankruptcy Court, Northern District of Illinois, Eastern Division.

Tax injunction actions in the district court also threaten to bring the federal court into an embarrassing

conflict with the state court on the federal questions which are often intertwined with state law issues. Thus in the *28 East Jackson* litigation referred to above, the inter-court conflict reached the point where Mr. Justice Walter V. Schaefer, speaking for the Illinois Supreme Court, observed that "as this case has been shaped, the role of the Illinois judicial system closely resembles that of a master in chancery for the Federal district court." *28 East Jackson Enterprises, Inc. v. Rosewell*, 65 Ill. 2d 420, 425, 358 N.E. 2d 1139, 1142 (1976).

The foregoing underscores the risk that federal intervention herein "can readily be interpreted as 'reflecting negatively upon the state courts' ability to enforce constitutional principles.' *Steffel v. Thompson*, 415 U.S. at 462." *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975).

In order to protect these vital interests this Court, prior to the adoption of § 1341, and Congress thereafter, has limited federal jurisdiction in tax cases to those where ". . . an asserted federal right might otherwise be lost." *Tully v. Griffin, Inc.*, 429 U.S. 68, 73 (1976).

It is in this context that the collector presents his arguments that § 1343(3) jurisdiction is lacking in this case, that the principles underlying *Trainor v. Hernandez*, 431 U.S. 434 (1977) authorize a state § 1983 action, and that the Illinois prepayment remedy provides the taxpayer herein with a plain, speedy, and efficient remedy under the Tax Injunction Act of 1937.

## I.

## THE DISTRICT COURT LACKS JURISDICTION UNDER 28 U.S.C. § 1343(3) TO ENTERTAIN CASES INVOLVING CONSTITUTIONAL CHALLENGES TO THE COLLECTION OF STATE TAXES.

The taxpayer's complaint relied solely upon 28 U.S.C. § 1343(3) as the basis for federal jurisdiction in the case. (See Complt. par. 3, A. 3) The collector asserted by motion to dismiss that actions involving state tax assessments do not fall within the purview of 28 U.S.C. § 1343 and 42 U.S.C. § 1983. (A. 11). It also appears that the taxpayer's allegations of "tax discrimination" find no support in this Court's Fourteenth Amendment cases. If the collector is correct in these contentions then the taxpayer's suit must fail for lack of jurisdiction.

In *City of Kenosha v. Bruno*, 412 U.S. 507 (1973) the Court was confronted with a significant jurisdictional issue not raised by the parties. Deciding the issue, the Court stated " '. . . it is the duty of this court to see to it that the jurisdiction of the [District Court], which is defined by statute, is not exceeded.' " *City of Kenosha*, 412 U.S. at 511, citing *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908).

The jurisdictional issue presented in this argument was raised in the district court by the collector's Motion to Dismiss. (Mo. Dis. par. 1, A. 11-12).

The district court granted the collector's Motion to Dismiss but premised its reasoning solely upon the Tax Injunction Act of 1937. (Pet. App. B at 20a-21a). The issues argued in the court of appeals were solely those in support of the district court's ruling that jurisdiction was precluded by § 1341.

The collector submits that review of the § 1343(3) jurisdictional question is warranted by cases which, like *City of Kenosha,** support the power of the Court to rule on jurisdictional issues. Additionally, judicial economy will be well served because the § 1343(3) jurisdictional issue is bound to recur in two contexts. First, unless the Court decides the issue here, that issue can be presented again below in the cause on remand. In that event the district court will necessarily have to decide whether to follow *Czajkowski v. State of Illinois*, 460 F. Supp. 1265 (N.D. Ill. 1977), *aff'd. unpublished order*, 588 F. 2d 839 (7th Cir. 1978). Second, when the Illinois courts look to federal law, as they must, in order to determine the jurisdictional ambit of state § 1983 actions they will be confronted with the clear language of *Czajkowski* affirmed by the Seventh Circuit that "constitutional challenges to the collection or validity of state taxes form a special class of cases which fall outside the jurisdictional parameters of 28 U.S.C. § 1343(3)." *Czajkowski, supra,*** at 1277. Viewed in this light the collector suggests that the jurisdictional issue is a "subsidiary question fairly comprised" within the question whether state § 1983 actions provide taxpayers a plain, speedy and efficient remedy under the Tax Injunction Act. *See*

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* *See Juidice v. Vail*, 430 U.S. 327, 331-33 (1977); *Glidden Co. v. Zdanok*, 370 U.S. 530, 535-37 (1962); *Guiterrez v. Waterman Steamship Corp.*, 373 U.S. 206, 209 (1963).

** The action of the Seventh Circuit in affirming *Czajkowski* by an unpublished order rather than a published opinion signifies that the issues therein are fairly well settled. See Rules of the United States Court of Appeals for the Seventh Circuit, effective July 1, 1976; Article III, Circuit Rule 35, (c), (1) and (2). The state courts will necessarily attach significance to this fact as it bears on the precedential value of the district court opinion. Moreover on April 11, 1980 the Seventh Circuit denied a motion to order publication of the opinion. See *Czajkowski v. State of Illinois*, 78-1213 (7th Circuit), order, April 11, 1980.

S. Ct. Rule 23(1)(c); Pet. at 2. Petitioners' Argument II at 29-37.

For the foregoing reasons the § 1343(3) jurisdictional question is properly before the Court and should be decided.

In *Lynch v. Household Finance Corporation*, 405 U.S. 538 (1972) the Court clearly decided that the limits of jurisdiction under 28 U.S.C. § 1343(3) were not set by distinguishing personal liberties from property rights. However, the Court did not overrule *Carter v. Greenhow*, 114 U.S. 317 (1884), *Pleasants v. Greenhow*, 114 U.S. 323 (1884) and *Holt v. Indiana Manufacturing Co.*, 176 U.S. 68 (1900), but rather distinguished the denial of jurisdiction therein as ". . . consistent with congressional restrictions of federal jurisdiction in this special class of cases, and with longstanding judicial policy." *Lynch*, 405 U.S. at 542-3, n.6. There is no question that this distinguished trio of cases was decided long before the passage of the Tax Injunction Act of 1937, and directly foreclosed federal jurisdiction in state revenue cases.*

Those cases, and the Court's treatment of them in *Lynch* were held by the district court in *Czajkowski v. State of Illinois*, 460 F. Supp. 1265 (N.D. Ill. 1977) to exclude § 1343(3) jurisdiction in tax cases. District Judge Prentice H. Marshall held as follows:

> . . . we discern a more fundamental defect with plaintiffs' § 1983 claims. We find that constitutional

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* *Holt* noted that the lineal parents of § 1343(3), referred ". . . to civil rights only, and are inapplicable here." *Holt*, 176 U.S. at 72. The Court accordingly ruled that, though federal question jurisdiction was asserted, the jurisdictional amount was not pleaded, and therefore reversed the lower court. In the case at bar no claim is premised on Federal Question Jurisdiction under 28 U.S.C. § 1331.

> challenges to the collection or validity of state taxes form a special class of cases which fall outside the jurisdictional parameters of 28 U.S.C. § 1343(3). Because § 1343(3) is the "jurisdictional counterpart" to civil rights actions under § 1983, and because "both sections are construed identically," *Lynch v. Household Finance*, 405 U.S. 538, 543 n. 7, 92 S. Ct. 1113, 31 L. Ed. 2d 424 (1972), the inapplicability of § 1343(3) is automatically fatal to plaintiffs' § 1983 claims.

*Czajkowski*, 460 F. Supp. at 1277.

After an extended discussion of *Hague v. C. I. O.*, 307 U.S. 496 (1939) and the tax cases set out in *Lynch*, 405 U.S. at 542-3, n.6, Judge Marshall concluded that:

> The Supreme Court's reaffirmation of the results of those decisions in *Lynch* convinces us that § 1343(3) may still be applied as an independent ground for declining jurisdiction over constitutional challenges to the collection of state taxes, even absent a clear bar under § 1341. Therefore, we conclude that plaintiffs' § 1983 claims fail for want of a jurisdictional basis under § 1343(3). See Note, 24 Stanford L. Rev. 1134 (1972); Note, 86 Harv. L. Rev. 201 (1972).

*Czajkowski*, 560 F. Supp. at 1279. As we have noted earlier the Seventh Circuit affirmed by an unpublished order. It is respectfully submitted that *Czajkowski* supports the refusal of the district court to take jurisdiction of the case.

In any event, the taxpayer's complaint falls short of pleading a Fourteenth Amendment violation. First, the allegations of the taxpayer's complaint, even read most favorably to her, fail to allege purposeful or intentional discrimination as required by *Snowden v. Hughes*, 321 U.S. 1 (1944). Second, as a matter of substance, the complaint fails to assert facts which have been held to

violate either the due process clause or the equal protection clause of the Fourteenth Amendment.

*Snowden* requires that pleadings alleging violation of rights allegedly protected by the Fourteenth Amendment must assert "intentional or purposeful discrimination between persons or classes." *Snowden*, 321 U.S. at 7. See also *28 East Jackson Enterprises, Inc. v. Cullerton*, 523 F. 2d 439, 440-41, n.2 (7th Cir. 1975). It is submitted that the taxpayer's complaint merely alleges general conclusions of "egregious disparities" in assessments without any specific allegation as to the wrongful intent or malicious purpose behind the tax assessments. In fact, if, throughout the taxpayer's complaint, one were to substitute the word "overassessment" for "discrimination", it becomes clear that the taxpayer has simply equated the two terms. Under the taxpayer's theory every overassessment would be a violation of the Fourteenth Amendment, because the overassessed taxpayer is treated differently from the rest of those in her class who are correctly assessed. The deficiency of the taxpayer's allegation can be seen by reference to paragraphs of her complaint (A. 9) where it is alleged:

> Requiring plaintiff to pay taxes upon her property in 3½ times the lawful amount and the amount at which property in the same class generally is assessed deprives her of rights of equal protection and due process secured to her under the 14th Amendment and Article I, § 2 of the Illinois Constitution. It further deprives her of rights of uniformity in taxation secured to her under Article IX, § 4 of the State Constitution and under the Revenue Act.

It is first apparent that this allegation does not charge a suspect classification, or, for that matter, any

classification but that between the "lawfully assessed" and the "overassessed". There is simply no allegation that the assessor placed the taxpayer in a separate, differently treated class based on the taxpayer's race, sex, political affiliation, national origin or any other attribute.

Second, the allegation charges no purpose or intent which might infuse the assessment with unconstitutionality. Lack of such substantive allegations leads to the anomaly recognized in *Snowden* where the Court observed that "a construction of the equal protection clause which would find a violation of federal right in every departure by state officials from state law is not favored." *Snowden*, 321 U.S. at 11-12.

Finally, it is clear that the numerous acts within the assessment process of a county are done intentionally and systematically. Short of the Internal Revenue Service, there are not many systems better organized and designed to run according to settled rules than real estate tax collection systems. But that sort of intent and systemization is not, we think, what is meant in *Snowden*. As the Court observed:

> It is not enough to establish a denial of equal protection that some are assessed at a higher valuation than others. The difference must be due to a purposeful discrimination, which may be evidenced, for example, by a systematic under-valuation of the property of some taxpayers and a systematic over-valuation of the property of others, so that the practical effect of the official breach of law is the same as though the discrimination were incorporated in and proclaimed by the statute.

*Snowden*, 321 U.S. at 9.

The cases which the Court cited in support of the proposition are highly instructive. Of the nine cases cited in the text and accompanying footnote, six dealt with railroads, two with iron or coal companies, and one with a railroad bridge, all of which were very aggressively taxed by the states during the last quarter of the 19th century and even into the early 1900's. More importantly, all those cases deal with fact situations where, contrary to the state constitution, other property (usually residential and light commercial real estate) were substantially undervalued, while the railroad, or bridge company, or steel mill was assessed at "full value".* The case at bar does not present that fact situation at all. Instead only overvaluation is asserted. It is submitted that the complaint fails to charge intentional undervaluation of the type which was historically remedied in the "railroad" cases. To hold that a constitutional claim arises from these allegations surely

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* In the slightly different context of state taxation of national banks, which has generated its own body of tax equivalency law [see e.g., *Michigan National Bank v. State of Michigan*, 365 U.S. 467 (1961) and *Bancorporation v. Korzen*, 64 Ill. 2d 200, 355 N.E.2d 31 (1976)] the court has held in *Cummings v. National Bank*, 101 U.S. 153 (1879) ". . . when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, . . . equity may properly interfere to restrain the operation of this unconstitutional exercise of power." *Cummings*, 101 U.S. at 157-58. The importance of this problem, often called valuation debasement, has diminished generally as governmental revenues have come to be generated more and more through excise and income taxation rather than *ad valorem* property taxation. Illinois solved much of its problem in this area by abolishing the personal property tax, 1870 Const. Amendment IX-A (adopted November 25, 1970), and adopting, in 1970, constitutional provisions allowing classification of property for the purposes of taxation. Art. IX, Section 4, Ill. Const. 1970.

would trivialize the lofty protections of the Fourteenth Amendment's equal protection clause in a manner rejected in *Snowden.* See 321 U.S. at 11-12 (Stone, J. for the Court), and at 16-17 (Frankfurter, J. concurring).

The few modern § 1983 cases in this area support the proposition that something more than overvaluation of property is necessary to violate the taxpayer's equal protection rights under the Federal Constitution. Thus *Garrett v. Bamford,* 538 F. 2d 63 (3rd Cir. 1976) holds that allegations of intentional racial discrimination state a claim under § 1983 and the Fourteenth Amendment. The relief sought in *Garrett* was ". . . an injunction requiring defendants immediately to cause the assessment of all residential property within the County on a non-discriminatory basis, and to make an annual assessment with proofs submitted to the court to demonstrate that the assessment is uniform and non-discriminatory." *Garrett,* 538 F. 2d at 65-66.

The complaint in the case at bar fails, however, to allege that the assessment of taxpayer's property was tainted by racially discriminatory intent,* and only requests relief directed towards an adjudication of the correct valuation of the subject property. Similarly *Weissinger v. Boswell,* 330 F. Supp. 615 (N.D. Ala. 1971) dealt with allegations of wide spread lack of uniformity in Alabama on a statewide basis. No such allegations are made in the complaint at bar.

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* The allegation of paragraph 11 of the taxpayer's complaint that "disparities in overassessment . . . are far greater in number and size in older inner city and county areas owned, inhabited or used to a larger extent by minorities and poorer people" (A. 7) surely fails the specificity tests of *Washington v. Davis,* 426 U.S. 229 (1976) and *Village of Arlington Heights v. Metropolitan Housing Development Corp.,* 429 U.S. 252 (1977).

*Fulton Market Cold Storage Co. v. Cullerton*, 582 F. 2d 1071 (7th Cir. 1978) held that allegations that defendant tax officials ". . . systematically, knowingly, intentionally, fraudulently and invidiously assessed . . . property at levels other than permitted by law, and greatly in excess of the levels at which property in Cook County was generally assessed. . . ." stated a claim under 42 U.S.C. § 1983. *Fulton*, 582 F. 2d at 1073. That court however, did not set out or analyze the constitutional underpinnings of the holding because the only question presented therein was whether § 1341 barred an action for damages premised on 42 U.S.C. § 1983.

It is submitted that the complaint has failed to allege facts sufficient to state a violation of Fourteenth Amendment equal protection rights. Moreover, it would seem that the taxpayer's allegations that she is assessed 3½ times higher than the law allows smacks more of a denial of due process, than of equal protection. However, the case of *McGovern v. New York*, 229 U.S. 363 (1913) holds that due process is not denied where there is a mistaken or erroneous valuation of property taken for public use. Similarly it seems clear that, given the broad range of administrative and legal remedies available in Illinois, the taxpayer was, and will be, accorded both the substantive and procedural process which was her due in the assessment of her real estate. *Weyerhaueser v. Minnesota*, 176 U.S. 550, 555-56 (1900); *Security Trust v. Lexington*, 203 U.S. 323, 333-34 (1906). That she was unsuccessful in convincing the assessor of her notion of the property's value does not, without much more, warrant intrusion by the federal court into the state remedies which are designed to assure tax uniformity.

It is therefore submitted that the foregoing fully supports the refusal of the district court to take jurisdiction of the case.

## II.

## THE RIGHT OF THE TAXPAYER TO CHALLENGE HER REAL ESTATE TAX ASSESSMENT BY A § 1983 ACTION IN ILLINOIS COURTS PRECLUDES FEDERAL JURISDICTION.

Illinois law is clear that a civil rights action pursuant to 42 U.S.C. § 1983 may be maintained in Illinois courts. *Alberty v. Daniel*, 25 Ill. App. 3d 291, 295 (1st Dist. 1974), 323 N.E. 2d 110, 113-114; *Bohacs v. Reid*, 63 Ill. App. 3d 477, 481-82 (2nd Dist. 1978), 379 N.E. 2d 1372, 1375. In fact, the Appellate Court in *Alberty* straightforwardly rejected *Chamberlain v. Brown*, 442 S.W. 2d 248 (Tenn. 1969) the only case, so far as we can find, which has refused to acknowledge concurrent state court jurisdiction of actions premised upon the Civil Rights Act. See *Alberty, supra*, at 295. *Alberty* is settled law in the First Appellate District of Illinois, and is binding upon the Circuit Court of Cook County, Illinois, the state forum which would have venue and jurisdiction of a state § 1983 tax action in this case.

In fact, every state court which has considered the question, except Tennessee's, has permitted § 1983 actions to go forward. *See*, Arizona—*New Times, Inc. v. Arizona Bd. of Regents*, 20 Ariz. App. 422, 513 P. 2d 960 (1973); California—*Brown v. Pitchess*, 13 Cal. 3d 518, 531 P. 2d 772 (1975); *Martinez v. California*, 85 Cal. App. 3d 430, 149 Cal. Rptr. 519, (1978) *aff'd. Martinez v. State of Cal.*, ..... U.S. ....., 100 S. Ct. 553 (1980); Massachusetts—*Rzeznik v. Chief of Police*, 373 N.E. 2d 1128 (1978); Michigan—*Dudley v. Bell*, 50 Mich. App. 678, 213 N.W. 2d 805 (1973); New York—*Holt v. Troy*, 78 Misc. 2d 9, 355 N.Y.S. 2d 94 (1974); New Mexico—*Gomez v. Board of Ed. of Dulce Ind. Sch. Dist. No. 21*, 85 N.M. 708, 516 P. 2d 679 (1973); North Carolina—*Williams v. Green*, 36 N.C. App. 80, 243 S.E. 2d 156 (N.C. 1978); Wisconsin—

*Terry v. Kolski*, 78 Wisc. 2d 693, 254 N.W. 2d 704 (Wisc. 1977).

Three federal district courts have ruled that the availability of a § 1983 action in state court provides a plain, speedy and efficient state court remedy under § 1341, thereby precluding federal jurisdiction. *Advertiser Co. v. Wallace*, 446 F. Supp. 677 (M.D. Ala. 1978); *Green v. Klinkofe*, 422 F. Supp. 1021 (N.D. Ind. 1976); *Horn v. O'Chesky*, 378 F. Supp. 1280 (D.N.M. 1974). See also, generally *Long v. District of Columbia*, 469 F. 2d 927 (D.C. Cir. 1972).

Most recently, and subsequent to the opinion of the court below, this Court reviewed a § 1983 state court ruling in *Martinez v. State of California*, ..... U.S. ....., 100 S. Ct. 553 (1980), where the California court had assumed jurisdiction of both state claims and federal § 1983 claims against the state arising from a parolee's murder of a girl. Mr. Justice Stevens, writing for the Court noted:

> [T]he California courts accepted jurisdiction of this federal claim. That exercise of jurisdiction appears to be consistent with the general rule where
>
> "an act of Congress gives a penalty to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided otherwise by some act of Congress, by a proper action in a state court." *Testa v. Katt*, 330 U.S. 386, 391, 67 S. Ct. 810, 813, 91 L. Ed. 967, quoting *Claflin v. Houseman*, 93 U.S. 130, 137, 23 L. Ed. 833.

*Martinez*, 100 S. Ct. at 558 n. 7.

We submit that Illinois clearly has the power to choose, and, in *Alberty*, has chosen to permit actions

asserting federal § 1983 claims to be brought in her courts. The Illinois rule in *Alberty* accords with the overwhelming majority of cases reaching the issue, and that rule is therefore settled, certain, plain and clear within the most strict reading of § 1341.

However, the court below found the § 1983 remedy "less than plain" because of ". . . the doubt whether an Illinois Court would apply federal equity law instead of the Illinois rule against interest on tax refunds." 604 F. 2d at 537-38. There should, however, be no doubt that federal equity law must apply to federal § 1983 claims in state courts. Indeed in *Martinez* the Court observed that:

> "It is clear that the California immunity statute does not control this claim even though the federal cause of action is being asserted in the state courts.

*Martinez*, 100 S. Ct. at 558.

Moreover, the Supremacy clause of the Federal constitution binds the state courts in their adjudication of federal rights. *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 238-39 (1969). In any event, this Court will have the final decision on the state court treatment of the § 1983 federal claims, just as it did in *Martinez*.

Illinois courts have the full authority, by the state constitution, to give injunctive relief in tax assessment cases, and there is no reason to believe that injunctive relief would not be made available to a taxpayer who alleged deprivation of a federal right sought to be remedied by the state § 1983 action. This is not to say that the decision of the state court as to whether federal equity law requires pre-judgment interest on tax refunds will necessarily accord with the opinion of the court below. Furthermore, as in *Martinez*, the state

court may say that no deprivation of a federal right exists at all. Then, in our view, it is up to the Court to review the decision of the state tribunal.

What the court below incorrectly achieved was a complete finesse of the Illinois courts on this issue. If § 1341 means anything, it must mean at the very least that the state court be given the chance to rule upon the precise question which the taxpayer, by her federal action herein, seeks to withdraw from it. This Court's rule in *Tully v. Griffin, Inc.*, 429 U.S. 68, 73 (1976) that:

> A federal district court is under an equitable duty to refrain from interfering with a State's collection of its revenue except in cases where an asserted federal right might otherwise be lost.

clearly requires that the state court be permitted to rule upon the claims asserted in federal court.

However, the court below ruled, as a matter of principle, that:

> Reading the Tax Injunction Act to bar federal court jurisdiction on the basis of the possibility of bringing a federal cause under Section 1983 in state court leads to an untenable conclusion; the Tax Injunction Act would bar federal jurisdiction in all cases involving state tax operations—without exception.

*LaSalle*, 604 F. 2d at 538.

The collector first submits that this conclusion is analytically wrong because diversity cases under 28 U.S.C. § 1332 obviously will be unaffected by a state's acceptance of jurisdiction of a federal § 1983 claim. Diverse plaintiffs who desire to challenge state tax operations on state grounds are, of course, entitled to proceed in federal court if state remedies are not plain, speedy and efficient within the meaning of the Tax Injunction Act. In-

deed, the initial thrust to enact the Tax Injunction Act appears to have been provided by complaints that diverse foreign corporations were tying up state taxes in federal court,

> and all the time in this dispute there is no federal question involved. There is a dispute arising under a State Statute or law of other origin and nothing more.

81 Cong. Rec. 1417 (1937) (Remarks of Sen. Bone). See also, *Garrett v. Bamford*, 538 F. 2d 63, 66-67 (3rd Cir. 1976); *Tramel v. Schrader*, 505 F. 2d 1310, 1316 (5th Cir. 1975); *Hargrave v. McKinney*, 413 F. 2d 320, 325 (5th Cir. 1969); *Fulton Market Cold Storage Co. v. Cullerton*, 582 F. 2d 1071, 1074-75 (7th Cir. 1978).

Secondly, the theory of concurrent jurisdiction, by which a state court may entertain a federal cause of action based on § 1983, surely cannot supply a basis for state jurisdiction of a diversity case filed in federal court under § 1332. To so hold would thwart completely the protections which congress has granted to potential out-of-state plaintiffs. It thus follows that diversity jurisdiction is wholly unaffected by a state court's willingness to entertain federal claims under section 1983.*

Until the scope of the civil rights jurisdiction had been expanded by *Monroe v. Pape*, 365 U.S. 167 (1961) and *Lynch v. Household Finance Corporation*, 405 U.S. 538

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* In *Fulton Market Cold Storage Co. v. Cullerton*, 582 F.2d 1071 (7th Cir. 1978), *cert. denied*, 439 U.S. 1121 (1979) the Seventh Circuit held that a damage action premised upon 42 U.S.C. § 1983 was not so intrusive as to be barred by the Tax Injunction Act. Taxpayers who consider themselves aggrieved by tax officials' actions thus have an available federal damage remedy, one which puts far less pressure on the system than anticipatory litigation.

(1972) the Tax Injunction Act operated primarily as a limitation on the federal question jurisdiction of 28 U.S.C. § 1331, and the diversity jurisdiction of 28 U.S.C. § 1332. *See* P. Bator, P. Mishkin, D. Shapiro, and J. Wechsler, Hart & Wechsler's, The Federal Courts and the Federal System, 947-950 (2nd Ed. 1973); Note, 24 Stanford L. Rev. 1134, 1141-42 (1972).

Therefore, the attempt by the court below to show that the collector's argument herein is overinclusive falls of its own weight. Properly understood and articulated, the collector's argument is that a state § 1983 action is consistent not only with the policy of § 1983, which is effective vindication of federal rights, but also with the policy behind § 1341, which is the prevention of intrusive federal litigation into state tax collections. Furthermore the principles laid down recently by this Court in *Trainor v. Hernandez*, 431 U.S. 434 (1977) tilt the balance, if such need be struck, in favor of preclusion of anticipatory federal jurisdiction so long as state taxes are, as here, in collection.

This Court's line of cases from *Younger v. Harris*, 401 U.S. 37 (1971) through *Trainor v. Hernandez*, 431 U.S. 434 (1977) weigh against the intrusion of the court below into the sensitive area of state taxation. A proper respect for the courts and the tax agencies of Illinois counsels against a direct federal intrusion into the tax collection system, particularly where a federal damage action and a state § 1983 action are each available to an aggrieved taxpayer.

It must be remembered that the tax collection procedure in Illinois is a law suit instituted by the county collector at the end of the tax year when it has been determined which properties are delinquent. The collector's application for judgment and order of sale is

precisely the state court lawsuit which a federal tax injunction will forestall. There is no question that all federal and state questions can be raised as objections to the collector's Application. Illinois courts regularly decide both state and federal claims in administering the legal remedy which the taxpayer here seeks to avoid. See *LaSalle Nat. Bank v. County of Cook*, 57 Ill. 2d 318, 324, 312 N.E. 2d 252, 255 (1974) ("the legal remedy by way of payment under protest followed by objections to the application for judgment for delinquent taxes provides an adequate remedy at law wherein the alleged irregularities and violations of plaintiff's constitutional rights may be litigated and, if warranted, relief granted.") In view of Illinois' position on § 1983 actions in state courts, it is hard to see how an asserted federal right will be lost in a state court § 1983 action.

The opinion of the court below runs afoul of important *Younger* comity principles in two respects: First, the principles of federalism, comity and equitable restraint of federal power expressed in *Younger* and reaffirmed in *Trainor* apply as well to cases involving state taxes as they do to other vital state court proceedings. There is no reason to read the congressional enactment of the Tax Injunction Act of 1937 as a limitation on those principles. This is so because the policy behind *Younger* abstention and § 1341 is based on the intrusion into state affairs authorized in *Ex parte Young*, 209 U.S. 123 (1908). If anything, § 1341 is a direct signal to the federal courts of the wide berth to be given the states when it comes to enjoining tax collections. Mr. Justice Stevens' objection in his *Trainor* dissent that the Court is "fashioning a non-statutory abstention doctrine which requires even greater deference to the State as an ordinary litigant than Congress regarded as appropriate for the State's more basic fiscal needs," *Trainor*, 431

U.S. at 466. (Stevens, J. dissenting), clearly articulates the restrictive approach to § 1341 interpretation which was impliedly rejected by the majority in *Trainor*.

It is submitted that Illinois' tax collection system is, under *Trainor*, entitled to at least as much protection as was its welfare loss recoupment program. Thus it is necessary for the Court to determine whether the allegations of the taxpayer's complaint herein allege the sort of grounds which bear up under *Younger* scrutiny.

It is clear, however, that the complaint fails to assert claims of irreparable injury which are "great and immediate," or that the tax collection statute is "flagrantly and patently violative of express constitutional prohibitions." *Younger*, 40 U.S. at 53. This point is underscored by the availability to the taxpayer of a federal § 1983 damage action recently approved by the Seventh Circuit. *Fulton Market Cold Storage Co. v. Cullerton*, 582 F. 2d 1071 (1978).

If comity means avoiding the unseemly tug of war between two courts of coordinate jurisdiction over a given case and avoidance of the concomitant risk of conflicting judgments, then the collector's argument accords with even the most strict notion of the term. If federalism acknowledges that the Constitution has established state courts as fully competent adjudicators of federal questions and protectors of federal rights, then the collector's arguments herein foster it. If traditional federal equity abhors undue delay, interruption and confusion in the state's administration of its tax system, then the collector's arguments follow that law. It is, therefore, respectfully submitted that the court below incorrectly held that the availability of a § 1983 action in state court fails to bar federal jurisdiction under § 1341.

## III.

## THE ILLINOIS STATUTORY REAL ESTATE TAX REMEDY, WHICH DENIES PRE-JUDGMENT INTEREST, IS PLAIN, SPEEDY, AND EFFICIENT WITHIN THE MEANING OF THE TAX INJUNCTION ACT OF 1937.

### A.

### The Illinois Statutory Remedy.

The Illinois statutory remedy applicable in Cook County for challenging allegedly excessive real estate tax assessments and taxes provides as follows: The taxpayer is initially afforded the opportunity to challenge an assessment by filing a complaint with the Assessor. (See Ill. Rev. Stat. 1977, ch. 120, sec. 578, Br. Ap. 1a) If unsatisfied with the assessor's assessment, the taxpayer is provided with the opportunity to file a complaint with the board of appeals. (See Ill. Rev. Stat. 1977, ch. 120, sec. 594(1), Br. Ap. 2a) If the taxpayer desires to further challenge the assessment, he is required to first pay the taxes based on the challenged assessment under protest and file an objection to the collector's annual Application for Judgment. (See Ill. Rev. Stat. 1977, ch. 120, secs. 675 and 716, Br. Ap. 2a, 5a) In Cook County the tax bills are sent in two installments. The first installment for a particular tax year is equal to one-half the previous year's tax and is due, by statute, on March 1 of the year following the tax year in question. The second installment is due, by statute, on August 1 of the year following the tax year in question. (Ill. Rev. Stat. 1977, ch. 120, sec. 705.1) Thereafter, in October or later, by statute, the collector makes his annual Application for Judgment. (See Ill. Rev. Stat. 1977, ch. 120, sec. 710, Br. Ap. 5a) It is at this statutory proceeding where the taxpayer may file a "specific objection" and obtain a

judicial determination as to any issue. *Andrews v. Foxworthy*, 71 Ill. 2d 13, 373 N.E. 2d 1332 (1978); *Clarendon Associates v. Korzen*, 56 Ill. 2d 101, 306 N.E. 2d 299 (1973). Within 90 days after the filing of an objection, the trial court is to hold a conference with the taxpayer's counsel and the collector's counsel. If a settlement cannot be reached, either party may request a hearing to be held within 90 days of the request for said hearing. If the taxpayer is entitled to a refund, the court enters an order refunding the appropriate amount of tax paid. (See Ill. Rev. Stat. 1977, ch. 120, sec. 716, Br. Ap. 5a)

The particular aspect of the Illinois statutory remedy that the taxpayer in the case at bar believes to render the statutory remedy not to be "plain, speedy and efficient" is the Illinois supreme court's holding, in *Lakefront Realty Corp. v. Lorenz*, 19 Ill. 2d 415, 167 N.E. 2d 236 (1960), that refunds are to be made without awarding interest for the time the taxpayer does not have the use of the refunded tax payment. In *Lakefront* the taxpayer brought an equity action claiming an excessive real estate tax and that the Illinois statutory remedy at law was inadequate because no interest was awarded on refunds.* The court reviewed the pertinent federal and state precedents presented to it and held that the taxpayer was not legally entitled to prejudgment interest on a refund. The court stated:

> "We are of the opinion that the latter view [that pre-judgment interest is not to be awarded on tax refunds in the absence of a statute expressly providing for interest] is the only view compatible with the statutory system which provides for the appropriation, levy, collection and disbursement of

* The equity action was not brought pursuant to 42 U.S.C. § 1983, and the taxpayer made no claim that the denial of interest violated due process.

> taxes in this state, and we think too, as other courts have pointed out, (*Kaemmerling v. State*, 81 N.H. 405, 128 Atl. 6; *Schlesinger v. State*, 195 Wis. 366, 218 N.W. 440), that the silence of our refund statute on the question of interest discloses a legislative intention to deny it. Accordingly, we conclude that plaintiff is not entitled to interest in the absence of a statute imposing that liability. This being so, the failure of the statutory remedy to provide for the recovery of interest is no measure of its adequacy or inadequacy."

*Lakefront*, 19 Ill. 2d at 423, 167 N.E. 2d at 241.

B.

**Pre-Judgment Interest On Tax Refunds Is Not Required To Make A State Court Remedy Plain, Speedy And Efficient Because Pre-Judgment Interest Is Not Held To Be An Element Of Recoverable Damages In Tax Overassessment Cases.**

This Court most recently explained the federal district court's duty to refrain from issuing tax injunctions against the collection of state and local taxes in *Tully v. Griffin, Inc.*, 429 U.S. 68 (1976):

> A federal district court is under an equitable duty to refrain from interfering with a State's collection of its revenue except in cases where an asserted federal right might otherwise be lost.

*Tully*, 429 U.S. at 73. This has been the federal equity rule over the years. *Boise Artesian Hot & Cold Water Co. v. Boise City*, 213 U.S. 276, 282 (1909),* *Matthews v. Rodgers*, 284 U.S. 521 (1932).

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* In reversing a district court tax injunction, this Court stated: "An examination of the decisions of this court shows that a proper reluctance to interfere by prevention with the

(Footnote continued on following page)

Moreover, this Court has interpreted the Tax Injunction Act, 28 U.S.C. § 1341, as being a congressional confirmation of the Court's prior federal equity practice in the area of state and local taxation:

> This policy of restraint has long been reflected and confirmed in the congressional command of 28 U.S.C. § 1341 that no injunction may issue against the collection of a state tax where state law provides a 'plain, speedy and efficient remedy.'

*Tully*, 429 U.S. at 73. Thus, the Tax Injunction Act has not been interpreted to have created new rights, but rather it has been interpreted to sanction existing law. Accordingly, as the court below noted (604 F. 2d at 533) in the case at bar, the test of whether or not a state court remedy to challenge state taxes is "adequate" so as to bar federal anticipatory relief, is the same as the test to determine whether or not the state remedy is "plain, speedy and efficient" under 28 U.S.C. § 1341. The two terms may be used interchangeably. This point is important because the law prior to the passage of 28 U.S.C. § 1341, in 1937, will then be instructive as to whether a state remedy is "plain, speedy and efficient."

Since the taxpayer challenges Illinois' denial of pre-judgment interest as being inadequate, the taxpayer has necessarily created the issue of whether or not pre-judgment interest on tax refunds is an element of damages in overassessment cases. If pre-judgment interest is not generally awarded as an element of damages in overassessment cases in the absence of a statute so directing, then it would be difficult to see the

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* *continued*
fiscal operations of the State governments has caused it to refrain from so doing in all cases where the Federal rights of the persons could otherwise be preserved unimpaired." 213 U.S. at 282.

"inadequacy" of the Illinois statutory remedy. The taxpayer should not be permitted to obtain equity jurisdiction by claiming that the denial of pre-judgment interest on refunds renders the remedy at law "inadequate" if there is no common law or constitutional right to pre-judgment interest on tax refunds. The taxpayer should not be permitted to "beg the issue" or "put the cart before the horse."

We therefore submit that the importance of the following cases from nineteen state and territorial jurisdictions where the courts have held that pre-judgment interest on state and local tax refunds is not warranted if there is no statutory authorization for the pre-judgment interest, cannot be minimized:* California—*Southwest Land Co. v. Los Angeles County*, 46 Cal. App. 9, 188 P. 575 (1920); Colorado—*Antero & Lost Park Reservoir Co. v. Park County*, 75 Colo. 131, 225 P. 269 (1924); Connecticut—*Marsh v. Brown*, 31 Conn. Supp. 134, 325 A. 2d 466 (1974); Illinois—*Lakefront Realty Corp. v. Lorenz*, 19 Ill. 2d 415, 167 N.E. 2d 236 (1960); Iowa—*Crown Concrete Co. v. Conkling*, 247 Iowa 609, 75 N.W.

* The minority view is that pre-judgment interest on state and local tax refunds is due notwithstanding the lack of statutory authorization: Alaska—*Ketchikan Spruce Mills v. Dewey*, 17 Alaska 336 (Dist. Ct. 1957); Indiana—*Lake County v. Donch*, 6 Ind. App. 337, 33 N.E. 663 (1893); Massachusetts—*Boott Cotton Mills v. Lowell*, 159 Mass. 383, 34 N.E. 367 (1893) (interest on void taxes, but not on overassessments); Michigan—*Standard Oil Co. v. State*, 283 Mich. 85, 276 N.W. 908 (1937); Montana—*Williams v. Harvey*, 91 Mont. 168, 6 P.2d 418 (1931); New York—*Brodsky v. Murphy*, 25 N.Y.2d 518, 255 N.E.2d 700 (1969) (interest on unconstitutional and void taxes, but not on overassessments); Pennsylvania—*Cities Service Oil Co. v. Pittsburgh*, 449 Pa. 481, 297 A. 2d 466 (1972); South Dakota—*Chicago, St. Paul, M. & O. Ry. v. Mundt*, 56 S.D. 530, 229 N.W. 394 (1930); Florida—*City of Opa-Locka v. Buckress Land Co.*, 247 So. 2d 339 (1971); Nevada—*Washoe Investment, Inc. v. State*, 532 P. 2d 265 (1975).

2d 351 (1956); Kansas—*Jackson County v. Kaul*, 77 Kan. 717, 96 P. 45 (1908); Massachusetts—*Boott Cotton Mills v. Lowell*, 159 Mass. 383, 34 N.E. 367 (1893); (no interest on overassessments, but interest on void assessments); Mississippi—*Gulf, Mobile and Ohio Ry. v. Webster County*, 194 Miss. 660, 13 So. 2d 644 (1943); New Jersey—*Hahne Realty Corp. v. Newark*, 119 N.J.L. 12, 194 A. 191 (1937); New York—*Brodsky v. Murphy*, 25 N.Y. 2d 518, 255 N.E. 2d 700 (1969) (no interest as to excessive taxes, but interest as to unconstitutional and void taxes); North Carolina—*Cannon v. Maxwell*, 205 N.C. 420, 171 S.E. 624 (1933); North Dakota—*Ford Motor Co. v. Baker*, 71 N.D. 298, 300 N.W. 435 (1941); Ohio—*Early S. Daniel Co. v. Cincinnati*, 53 Ohio App. 397, 5 N.E. 2d 409 (1935); Oklahoma—*Eaton v. St. Louis-San Francisco Ry.*, 122 Okla. 143, 251 P. 1032 (1925); Puerto Rico—*Fajardo Sugar Co. v. Richardson*, 7 Puerto Rico F. 154 (D.C. P.R. 1914); Rhode Island—*Daniels Tobacco Co. v. Norberg*, 335 A. 2d 636 (R.I. 1975); Tennessee—*New England Mutual Life Insurance Co. v. Reece*, 169 Tenn. 84, 83 S.W. 2d 238 (1935); Virginia—*Commonwealth v. Safe Deposit & Trust Co.*, 155 Va. 458, 155 S.E. 897 (1930); Wisconsin—*Schlesinger v. State*, 195 Wisc. 366, 218 N.W. 440 (Wisc. 1928).

The one thread which links virtually all of these cases is the *ratio* that since interest is a creature of statute, pre-judgment interest on a tax refund may be awarded only if the legislature has provided for it by statute. Moreover, this is the general rule which has been applied in the federal courts. For instance, in *United States v. Board of Commissioners of Comanche County, Oklahoma*, 6 F. Supp. 401 (W.D. Okla. 1934) the court held that a taxpayer who was entitled to a refund of local real estate taxes paid, was not entitled, in the

absence of statute, to pre-judgment interest from the local tax collecting authorities. The court stated:

> On the question of interest, the court appreciates the position of the defendant. Where taxes are paid, under protest, the collecting authority can only hold them in trust, and since Comanche County would be regarded in this case as a trustee, this court knows of no provision for the payment of interest from some other fund whose application had been provided by statute.

*Comanche County*, 6 F. Supp. at 413.

And, of course, the general rule is that the United States is not liable, in the absence of statute, for pre-judgment interest on federal income tax refunds.* For instance, in citing decisions of the Supreme Court, the First Circuit stated:

> . . . Interest against the government is only allowable as provided by statute. *Angarica v. Bayard*, 127 U.S. 251, 260, 8 S. Ct. 1156, 32 L. Ed. 159; *Boston Sand & Gravel Co. v. United States*, 278 U.S. 41, 49 S. Ct. 52, 73 L. Ed. 170. There is no fixed right to it. It depends on the law at the time when the claim is allowed by the department, or, if the claim is litigated, when the case is heard by the court. *Hind v. United States*, 41 F. 2d 892 (Ct. Cl.).

*Bertelsen & Petersen Engineering Co. v. United States*, 60 F. 2d 745, 748 (1st Cir. 1932). See also *Girard Trust Co. v. United States*, 270 U.S. 163 (1926).

Defendants also submit that the Illinois remedy has long been approved of as "adequate" and sufficiently

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* Note that *Erskine v. Arsdale*, 82 U.S. 75 (1872), dealing with jury instructions pertaining to interest, has been distinguished as not applying to taxes levied by state and local governments. See *United States v. Nez Perce County, Idaho*, 95 F 2d 238 (9th Cir. 1938) and cases cited therein.

"plain, speedy and efficient" to bar federal injunctive relief under 42 U.S.C. § 1341. In the leading case of *Matthews v. Rodgers*, 284 U.S. 521 (1932), the Court held:

> . . . But appellants [tax authorities] insist that the appellees are under no such constraint, either to expose themselves to the penalties for failure to pay the tax or to seek equitable relief against its collection, since each of them may pay the tax to the collecting officer under protest, and, under the laws of Mississippi, may maintain a suit at law for its recovery on the ground that it was exacted in violation of the Constitution of the United States. That such a procedure saves to the taxpayer his federal right, and, if available, will defeat the jurisdiction of federal courts to enjoin the collection of the tax, has long been the settled rule in this Court.

*Matthews*, 284 U.S. at 526.

Importantly, the Supreme Court, in an opinion delivered on the same day as *Matthews*, expressly held that the Illinois remedy for challenging an annual corporate franchise tax, which remedy provided for prepayment of the tax under protest and a remedy at law with no statutory provision for interest if the taxpayer prevailed, was adequate. *Stratton v. St. Louis Southwestern Ry. Co.*, 284 U.S. 530 (1932).

And in *Bland v. McHann*, 463 F. 2d 21 at 28 (5th Cir. 1972), *cert. denied*, 410 U.S. 966 (1973), the Fifth Circuit held that a state's failure to award interest with a tax refund did not render that state court remedy not "plain, speedy and efficient."

Accordingly, it is in this context that the Illinois Supreme Court followed both federal court decisions and the majority view of the states in holding, in *Lakefront Realty Corp. v. Lorenz*, 19 Ill. 2d 415, 167 N.E. 2d 236

(1960) that pre-judgment interest on tax refunds is not to be awarded in the absence of a statute so directing. Illinois law is clearly in accord with the general view of recovery of pre-judgment interest on tax refunds. See *Cooley on Taxation*, Vol. 3, § 1308 (1924), and 88 A.L.R. 2d 823.

Moreover, the majority common law rule does not conflict, we submit, with civil rights law of damages. In *Carey v. Piphus*, 435 U.S. 247 (1978), the Court, after concluding that the general principles of compensation are to apply to civil rights cases, stated:

> . . . In some cases, the interests protected by a particular branch of the common law of torts may parallel closely the interests protected by a particular constitutional right. In such cases, it may be appropriate to apply the tort rules of damages directly to the § 1983 action. See *Adickes v. S. H. Kress & Co.*, 398 U.S., at 231-232 (Brennan, J., concurring and dissenting).

*Carey*, 435 U.S. at 257-8.

Since taxpayers have for years been permitted to challenge allegedly excessive local taxation under the common law (i.e. not relying on the Equal Protection Clause or the Civil Rights Act), there is no reason not to apply the common law. In Illinois, for instance, the common law has long provided a remedy in cases which involve excessive real estate tax assessments. See *City of Chicago v. Burtice*, 24 Ill. 489 (1860). The three-pronged common law rule permitting relief has been recently stated in *Clarendon Associates v. Korzen*, 56 Ill. 2d 101, 306 N.E. 2d 299 (1973), as follows:

> . . . Overvaluation may be so excessive, under some circumstances, as to justify the conclusion that it was not honestly made and is thus constructively fraudulent. [Citations.] Similarly, when property is

> assessed disproportionately higher than other similar property [Citation] or the assessed value is reached under circumstances showing either a lack of knowledge of known values or a deliberate fixing of values contrary to known value, fraud will be inferred. [Citation.] In such cases courts will grant relief.

*Clarendon*, 56 Ill. 2d at 104-105, 306 N.E. 2d at 301.

Other states also provide for challenges to allegedly excessive state and local taxation. See 84 C.J.S. Taxation § 561.

Accordingly, even assuming, *arguendo*, that this case is properly brought in the federal courts, and even assuming, *arguendo*, that 42 U.S.C. § 1983 is applicable, there is no reason to expand the remedy from the one present at common law. The common law has always provided for relief in excessive tax assessment cases, as has Illinois common law in particular, and the taxpayer has failed to explain why the law of damages, as to excessive tax assessment cases, should be any different now. See *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 231-232 (1970) (Brennan, J., concurring and dissenting). Since the majority rule throughout the states is that pre-judgment interest, in tax refund cases, is not to be awarded without a statute so authorizing it, the taxpayer has failed to show any right to that interest. The taxpayer therefore has no right to equitable relief due to Illinois' legislative decision to deny pre-judgment interest.

In passing, we note that pre-judgment interest is not generally awarded in personal injury cases. See 25 C.J.S. Damages § 53(b). And the mere fact that in allegedly excessive tax cases the taxpayer must first pay the allegedly excessive tax, does not materially distinguish these cases. State and local governments' fiscal necessities have been held to warrant a system of pay-

ment of challenged taxes prior to litigation. See *Perez v. Ledesma*, 401 U.S. 82, 127-128, n. 17 (Brennan, J. concurring) (1971).

The taxpayer, however, relies primarily on *United States v. Livingston*, 179 F. Supp. 9 (E.D. S.C. 1959); *aff'd per curiam*, 364 U.S. 981 (1960), *Educational Films Corp. v. Ward*, 282 U.S. 375 (1931) and *Proctor & Gamble Distrib. Co. v. Sherman*, 2 F. 2d 165 (S.D. N.Y. 1924), to attempt to show that the omission of pre-judgment interest in the Illinois tax refund procedure renders that remedy inadequate. However, there are three major defects in the taxpayer's analysis.

First, as recently as 1966 the Supreme Court stated that it "need not decide whether omission to provide interest on a successful refund application renders the state remedy here an inadequate one within the meaning of § 1341." *Department of Employment v. United States*, 385 U.S. 355, 358 (1966). The Court indicated that the issue was still open. Secondly, even the Seventh Circuit, in the opinion below, stated that there "is no dispositive precedent on the issue." 604 F. 2d at 534. Rather, the statements relied on by the taxpayer can, at best, be considered dicta. And finally, none of the cases provide an historical analysis into the availability of pre-judgment interest as an element of damages in a local real estate tax overassessment case. Indeed, Judge Learned Hand's statement in *Proctor & Gamble Distrib. Co. v. Sherman*,* 2 F. 2d 165, 166 (S.D. N.Y. 1924)

* Judge Hand stated as follows:

"[I]t seems to me plain that it is not an adequate remedy, after taking away a man's money as a condition of allowing him to contest his tax, merely to hand it back, when, no matter how long after, he establishes that he ought never to have been required to pay at all. Whatever may have been our archaic notions about interest, in modern financial communities a dollar to-day is worth more than

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seems to be the seminal opinion indicating that omission of pre-judgment interest in a tax refund proceeding may render such a remedy inadequate. However, Judge Hand did not examine the law of damages to determine when pre-judgment interest is in order. And as we have shown, the majority of jurisdictions ruling on the issue have held or stated that pre-judgment interest on tax refunds is not to be awarded unless a statute is interpreted to so provide. Judge Hand's dictum is also consistent with those cases which permit pre-judgment interest where the tax is unauthorized by law or void, but deny it when the tax is excessive. Judge Hand's opinion, which has been cited in other dicta, is not therefore persuasive.

Moreover, Senator Bone, the sponsor of 28 U.S.C. § 1341 stated as follows in his presentation of the Tax Injunction Act:

> Perhaps it should be emphasized at this point that the bill does not take away any equitable right of a taxpayer, or deprive him of a day in court. Specific provision is made that the suit will be taken out of the jurisdiction of the Federal court only if a plain, speedy and efficient remedy may be had at law or in equity in the courts of the State. *Thus a full hearing and judicial determination of the controversy is assured.* [Emphasis added.]

81 Cong. Rec. 1415, 1416 (1937). Clearly the purpose of the Act is to remove federal jurisdiction in cases where a taxpayer is assured of a hearing on the merits in state court. This point is also noted in Senate Rep. No. 1035, 75th Cong., 1st Sess. 1937.

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* *continued*
a dollar next year, and to ignore the interval as immaterial is to contradict well-settled beliefs about value . . ." [2 F.2d at 166.]

The case at bar is also in sharp contrast to *Georgia Ry. v. Redwine*, 342 U.S. 299 (1952), which was relied on by the Seventh Circuit. In *Redwine*, this Court held that a state court remedy requiring the railroad to file over three hundred separate claims in fourteen different counties in Georgia, was inadequate. However, that case rested on the long-standing and well-recognized equity principle permitting equitable jurisdiction to avoid a multiplicity of lawsuits, in addition to the fact that only a portion of the challenged tax could be recovered, at best, under state law in the state courts. The right to pre-judgment interest in a tax refund action, however, has no well-recognized equity background.

Accordingly, we submit that the taxpayer has failed to show that pre-judgment interest is an element of damages in a real estate tax overassessment case. Therefore, the denial of pre-judgment interest is not one of those "recognized heads of equity jurisdiction" *(Shelton v. Platt*, 139 U.S. 591, 595 (1891)) and *Union Pacific Railway Co. v. Ryan*, 113 U.S. 516, 525 (1885) which would permit the remedy at law to be by-passed. The taxpayer's argument is really that equitable relief is the "best" and most "convenient" relief. However, Illinois is not required to provide a taxpayer with the best or the *most* efficient remedy. Only *a* plain, speedy and efficient remedy is required. *Miller v. Bauer*, 517 F. 2d 27, 32 (7th Cir. 1975); *Bland v. McHann*, 463 F. 2d 21, 29 (5th Cir. 1972). Moreover, although the taxpayer would, of course, like to use the equitable forum due to its convenience, this Court has not approved of the use of equity merely for the convenience of the taxpayer. *Arkansas Building & Loan Ass'n. v. Madden*, 175 U.S. 269, 271 (1899). The Seventh Circuit should therefore be reversed because pre-judgment interest on a tax refund is not required to render the Illinois statutory remedy to challenge taxes plain, speedy and efficient.

## CONCLUSION

For the foregoing reasons the collector respectfully submits that the opinion and judgment of the Court of Appeals for the Seventh Circuit should be reversed and the order of the District Court should be affirmed.

Respectfully submitted,

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# APPENDIX

Article IX, Section 4 of the Illinois Constitution provides:

"§ 4. Real Property Taxation

(a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county."

Ill. Rev. Stat. 1977, ch. 120, sec. 501a provides:

"501a. Classification under Constitution—Necessity for ordinance.) § 20a. Where real property is classified for purposes of taxation in accordance with Section 4 of Article IX of the Constitution and with such other limitations as may be prescribed by law, such classification must be established by ordinance of the county board. If not so established, the classification is void. Added by P.A. 78-700, § 1, eff. Jan. 1, 1974."

Ill. Rev. Stat. 1977, ch. 120, sec. 578 provides, in relevant part:

"In counties having a population of 1,000,000 or more inhabitants, the county assessor shall have authority annually to revise the assessment books each year and

correct the same as shall appear to him to be just and on complaint in writing in proper form by any taxpayer, and after affording such taxpayer an opportunity to be heard thereon, he shall do so at any time, until the time that the assessment is verified . . ."

Ill. Rev. Stat. 1977, ch. 120, sec. 594 provides, in relevant part:

"In counties containing 1,000,000 or more inhabitants, the board of appeals in any year shall (1) On complaint that any property is over assessed or under assessed, or is exempt, review and order such assessment corrected . . ."

Ill. Rev. Stat. 1977, ch. 120, sec. 675 provides:

"Except as otherwise provided in Section 224.1 of this Act, current taxes on real property shall be payable in 2 equal installments. The collector, when so requested by the party paying the taxes shall receive and receipt for such taxes in installments. The collector shall receive taxes on part of any lot, piece or parcel of land charged with taxes when a particular specification of the part is furnished. If the tax on the remainder of such lot or parcel of land remains unpaid the collector shall enter such specification in his return, so that the part on which the tax remains unpaid may be clearly known. The tax may be paid on an undivided share of real estate. In such case the collector shall designate on his record upon whose undivided share the tax has been paid.

If any person desires to object pursuant to Section 235 of this Act, to all or any part of a real property tax for any year, for any reason other than that the real estate is not subject to taxation, he shall first pay all of the tax installments due and such payment of the tax accompanied by a writing substantially in the following form:

Payment under protest.

Vol. No. ..... Item No. ..... (as the same appear on the General Tax Bill). Original amount of tax $..... Amount of payment $..... This payment shall be ap-

plied to the taxes of all taxing bodies ratably, subject to refund of .....% of the tax, which is objected to on the ground (here set forth ground of objection) and is, accordingly, made under protest.

Name of taxpayer .....

Address .....

The person protesting shall present to the collector 2 copies of the written protest signed by himself. The collector shall write or stamp the date of receiving the same upon the copies, and sign the same, one of which copies he shall retain and the other he shall deliver to the person making the payment under protest.

In counties having 1,000,000 or more inhabitants, and in other counties which have adopted the method provided for in Section 224.1, any such written protest, whether of all or any part of a real property tax, shall be presented to the collector at the time of payment of the second installment of said tax and at no other time.

The person paying real estate taxes under protest shall appear in the next application for judgment and order of sale and object to the taxes in relation to which the protest is made, and upon failure so to do, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of such taxes. . . .

In all counties, when the taxpayer appears and files objection, the court shall, after first determining that due notice, if required, has been given to the tax levying unit, hear and determine the matter according to the right of the case and enter judgment for any part of the taxes, or order a refund of any part of the taxes, so paid under protest. Appeals shall lie from such orders of the court as in other cases of objection to judgment and order of sale for taxes. Refunds shall be made by the collector in accordance with the final orders of the court, and the amount of such refunds shall be deducted from the taxes of the taxing bodies whose taxes were adjudged illegal, in the same or a subsequent year. Proceedings upon objections filed under this Section are subject to Section 194a.

Where any tax is paid in full and protested as herein provided before the delinquent taxes are transcribed into the tax judgment, sale, redemption and forfeiture record, and the taxpayer appears and files objection, the collector, within such time as may be fixed by the court, shall file a transcript from the tax warrant book showing the tax, and such transcript shall be an amendment to the tax judgment sale, redemption and forfeiture record, and the case shall proceed as if the tax had been originally transcribed therein.

In the payment of real or personal property taxes or any installment of real property taxes, the collector shall first apply such payments to interest (including interest added upon forfeiture to real property taxes) and costs, and after the payment of interest and costs such payments shall be applied upon the total tax of real or personal property upon which the payments are made.

No protest shall prevent or be a cause of delay in the distribution of tax collections among the taxing bodies of any taxes collected which were not paid under protest. The collector may withhold from distribution the amounts paid under protest or ½% of the total taxes collected, whichever is less. The collector shall deduct from the taxes of any taxing body for any year the amount of any tax for any year held illegal by the final order of a court, and use the amount deducted to equalize the distribution."

Ill. Rev. Stat. 1977, ch. 120, sec. 675a provides:

"Upon the filing of an objection under Section 194 . . . the court must, unless the matter has been sooner disposed of, within 90 days after such filing hold a conference between the objector . . . and the State's Attorney. If no agreement is reached at the conference, the court must, upon the demand of either the taxpayer or the State's Attorney, set the matter for hearing within 90 days of the demand. Compromise agreements on tax objections reached by conference between the objector . . . and the State's Attorney shall be filed with the court, and the State's Attorney shall prepare an Order covering the settlement and file the same with the

clerk of the court, within 15 days following said conference."

Ill. Rev. Stat. 1977, ch. 120, sec. 710 provides, in relevant part:

"Except as herein otherwise provided, all applications for judgment and order of sale for taxes . . . and for judgment fixing the correct amount of any tax paid under protest shall be made during the month of October . . . If for any cause the Collector is prevented from advertising and obtaining judgment during the month of October it shall be held to be legal to obtain judgment at any time thereafter . . . "

Ill. Rev. Stat. 1977, ch. 120, sec. 716 provides:

". . . The court shall examine the list, and if defense (specifying in writing, the particular cause of objection) be offered by any person interested in any of the lands or lots, to the entry of judgment against them, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be. Provided, that no person shall be permitted to offer any such defense unless such writing specifying the particular cause of objection shall be accompanied by an official original or duplicate tax collector's receipt, showing that all taxes to which objection is made have been paid under protest pursuant to the provisions of section 194 of this Act, and it shall be the duty of all tax collectors to furnish such duplicate receipt without charge.

If any party objecting to any tax paid under protest is entitled to a refund of the amount, or any part thereof, so paid under protest, the court shall enter judgment accordingly. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot or part of a tract or lot, for each kind of tax or special assessment included therein, and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form:

Whereas, due notice has been given of the intended application for a judgment against such lands and lots, and no sufficient defense having been made or cause shown why judgment should not be entered against such lands and lots, for taxes (special assessments, if any), interest, penalties and costs due and unpaid thereon for the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract, or tracts, or lots of land, or parts of tracts or lots (as the case may be), in favor of the People of the State of Illinois, for the sum annexed to each, being the amount of taxes (and special assessments, if any), interest, penalties and costs due severally thereon; and it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be sufficient to satisfy the amount of taxes (and special assessments, if any), interest, penalties and costs annexed to them severally, be sold as the law directs.

The order shall be signed by the judge. In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in such court, and no assessment of property or charge for any of the taxes shall be considered illegal on account of any irregularity in the tax lists or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax list without name or in any other name than that of the rightful owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof, and any irregularity or informality in the assessment rolls or tax lists, or in any of the proceedings connected with the assessment or levy of such taxes, or any omission or defective act of any other officer or officers connected with the assessment or levying of such

taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court, or by the person (in the presence of the court) from whose neglect or default it was occasioned. Provided, that where separate advertisement and application for judgment and order of sale is made on account of delinquent special taxes or special assessments in all cities, villages and incorporated towns in counties containing a population exceeding 1,000,000 inhabitants by the last preceding census of the United States or of this State, and in cities, villages and incorporated towns in other counties in which the county board by resolution has extended the time in which the return, required by section 209, may be made, the procedure shall in all respects be the same as in this section prescribed, except that there shall be two separate judgments and orders for sale, one on accunt of delinquent special taxes and special assessments and the other on account of delinquent general taxes."

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Cook County Ordinance #COM 76815 of December 17, 1973, provides in relevant part:

"Section 2. Real estate is divided into the following assessment classes:

Class 1: Unimproved real estate or real estate used as a farm.

Class 2: Real estate used for residential purposes when improved with a house, an apartment building of not more than six living units, or residential condominium, a residential co-operative or a government-subsidized housing project if required by statute to be assessed in the lowest assessment category.

Class 3: All improved real estate used for residential purposes which is not included in Class 2.

Class 4: Real estate owned and used by a not-for-profit corporation in furtherance of the purposes set forth in its charter unless used for residential purposes. If such real estate is used for residential purposes it shall be classified in the appropriate residential class.

Class 5: All real estate not included in any of the above four classes.

Section 3. The Assessor shall assess, and the Board of Appeals shall review assessments on, real estate in the various classes at the following percentages of market value:

| | | |
|---|---|---|
| Class 1: | — | 22% |
| Class 2: | — | 17% |
| Class 3: | — | 33% |
| Class 4: | — | 30% |
| Class 5: | — | 40%" |